

### **AMENDMENTS TO THE DRAWINGS**

The attached "Replacement Sheets" of drawings include a change to Figure 6 (section line 7-7 added) and the addition of a new Figure 7, resulting in the subsequent renumbering of original Figures 7 and 8 as current Figures 8 and 9. The attached "Replacement Sheets," which include Figures 1-9 replace the original sheets including Figures 1-8. No new matter has been added.

Attachment: Replacement Sheets

### **REMARKS**

Claims 1-24 remain pending in the application. New Claims 25 and 26 have been presented for the Examiner's consideration. Claims 8, 11 and 18 have been withdrawn from prosecution without prejudice as Applicants may wish to pursue the subject matter of these claims in future prosecution. Minor amendments have been made to the specification in order to correct informalities. Reconsideration of the rejections set forth in the aforementioned Office Action is respectfully requested in view of the above amendments, new claims and following remarks. The basis for these amendments and new claims can be found throughout the specification, claims and drawings as originally filed.

### **ALLOWABLE SUBJECT MATTER**

Claims 5, 14 and 22 stand objected to as "being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims." New Claim 25 corresponds to Claim 5 rewritten in independent form. Accordingly, new Claim 25 should be in condition for allowance.

### **REJECTION TO THE DRAWINGS**

The drawings stand objected to for certain informalities. Applicants have attached revised drawings ("Replacement Sheets") for the Examiner's approval. In the "Replacement Sheets", new Figure 7 has been added showing the waist region of the container in cross-section, the container being filled, sealed and under top load forces.

Such a container is illustrated in original Figure 6, however, new Figure 7 more clearly illustrates this aspect of the container. As a result, a change to Figure 6 was also required (section line 7-7 added), and original Figures 7 and 8 were renumbered as current Figures 8 and 9. Paragraph [0030.1] has been added and paragraphs [0035], [0037] and [0053] have been amended, in addition to adding new Figure 7, in order to present a more consistent disclosure. No new matter has been added. Accordingly, Applicants respectfully request that the Examiner enter these replacement drawings, and reconsider and withdraw the objection to the drawings.

#### **REJECTION OF CLAIMS UNDER 35 U.S.C. § 103**

Claims 1, 3, 4, 6, 8, 17, 18, 20, 21 and 23 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Tanabe et al., U.S. Patent Application Publication No. US 2001/0037992 in view of Krishnakumar et al., U.S. Patent No 5,704,503. Applicants respectfully traverse this rejection.

Claims 2, 10, 11, 13 and 15 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over the references as applied to Claim 1 above, and further in view of Denner et al., U.S. Patent No. 6,213,326. Applicants respectfully traverse this rejection.

Claims 7, 9, 16, 19 and 24 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over the references as applied to Claims 6, 8, 15, 18 and 23 above, and further in view of Lane et al., U.S. Patent No. 6,223,920. Applicants respectfully traverse this rejection.

Claim 12 stands rejected under 35 U.S.C. § 103(a) as being unpatentable over the references as applied to Claim 10 above, and further in view of Ota et al., U.S. Patent Application Publication No. US 2002/0000421. Applicants respectfully traverse this rejection.

The Examiner alleges that Tanabe et al. teaches “a hot fill container with a plurality of vacuum panels and columns in the sidewall portion and a modulating waist portion defined by the ribs. Note that the vacuum panels are considered to be responsive to pressure reduction and the waist portion is considered to be responsive to top load forces as shown by the tests therein.” Applicants respectfully disagree with the Examiner’s characterization that Tanabe et al., alone or in combination with Krishnakumar et al. or any of the other references cited, renders Applicants’ claimed invention obvious.

Contrary to Applicants’ claimed invention, the Tanabe et al. reference teaches and its stated purpose is to “achieve enhanced buckling strength in a bottle of a reinforcing rib structure comprising a horizontal concave rib in the waist portion of the bottle body and the reinforcing ribs disposed vertically at regular intervals along the circumference of this horizontal concave rib.” Accordingly, the rib structure located in the waist portion of the Tanabe et al. reference is designed to make the waist portion more rigid, collapsing and buckling under top load to failure. In contradistinction, Applicants’ claimed invention collapses under top load forces without significantly denting or deforming and once the top load forces have been removed, the waist region “rebounds”, and does not collapse or buckle to failure. In order to achieve this “rebound” feature, Applicants’ claimed invention, unlike the Tanabe et al. reference,

includes a “vertically modulating waist region”. The waist portion disclosed in Tanabe et al. is rigid and not modulating. Specifically in this regard, independent Claim 1 recites a plastic container having an “upper portion including a vertically modulating waist region; . . . said vertically modulating waist region being movable to accommodate top load forces . . .”. Similarly, independent Claim 10 recites a plastic container having an “upper portion including a tri-global vertically modulating waist region; . . . said tri-global vertically modulating waist region being movable to accommodate top load forces . . .”. Finally, independent Claim 17 recites a plastic container having a “vertically modulating waist region . . . said vertically modulating waist region being movable along a vertical axis in response to top load forces, . . .”. Tanabe et al., alone or in combination with Krishnakumar et al. or any of the other references cited, does not disclose, teach or suggest any similar structure such as a “vertically modulating waist region” which is movable to accommodate top load forces as recited in independent Claims 1, 10 and 17 of Applicants’ claimed invention. There is no motivation or incentive in Tanabe et al., alone or in combination with Krishnakumar et al. or any of the other references cited, to arrive at Applicants’ invention as claimed.

For the sake of brevity, it is respectfully submitted that in view of Applicants’ arguments stated above, Tanabe et al. is an improper primary reference, and Applicants’ claims are patentably distinct with respect thereto, as well as no teaching in existence to suggest the combination of the references.

The Examiner also alleges that to “have formed the waist portion such that it is “tri global” would have been obvious in view of the teaching by Denner et al of providing any odd number of gripping surfaces provided by ribs 32”. Applicants respectfully

disagree with the Examiner's characterization that Tanabe et al., alone or in combination with Krishnakumar et al. and Denner et al., or any of the other references cited, renders Applicants' claimed invention obvious.

Denner et al. discloses twelve (12) different plastic container designs for a gripable container structure which can be readily lifted and poured in a balanced manner. According to the Denner et al. disclosure, one of the novel aspects of the containers disclosed is that they permit the contents of a relatively large-sized container to be poured in a balanced, controlled manner due to the relative location of the grip with respect to the container geometries. In this regard, the container grip ring disclosed in the Denner et al. reference must be rigid in order to provide such a grip ring and to provide the container with circumferential hoop strength which resists unwanted ovalization. Again, in contradistinction, Applicants' plastic container invention teaches a "tri-global vertically modulating waist region" being movable to accommodate top load forces. Specifically in this regard, independent Claim 10 recites a plastic container having an "upper portion including a tri-global vertically modulated waist region; . . . said tri-global vertically modulating waist region being movable to accommodate top load forces . . .". Accordingly, Applicants respectfully submit that Tanabe et al., alone or in combination with Krishnakumar et al. and Denner et al., or any of the other references cited, does not disclose, teach or suggest Applicants' claimed invention. Moreover, the Examiner has failed to identify any motivation by one of ordinary skill in the art to combine or modify the art to arrive at the claimed invention other than the impermissible use of hindsight. Obviousness is not established by combining the teachings of the prior art absent some teaching, suggestion or incentive supporting such combination.

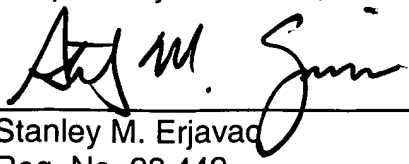
While it is Applicants' view that the claims as written are not obvious in light of the cited art and fully comply with Section 103, in the interest of expediting prosecution and without prejudice to pursuing this and related subject matter in future applications, Applicants have amended independent Claims 1, 10 and 17. Therefore, independent Claims 1, 10 and 17 should be in condition for allowance. Further, because Claims 2-7, 9, 12-16 and 19-24 depend from Claims 1, 10 and 17, they are at least as limited, are similarly not taught by Tanabe et al., alone or in combination with Krishnakumar et al. and Denner et al., or any of the other references cited, and should also be in condition for allowance. In view of the above amendments and these remarks, Applicants respectfully request the Examiner to reconsider and withdraw the Section 103 rejections to Claims 1-24.

### **CONCLUSION**

All the stated grounds of rejection have been properly traversed, accommodated, or rendered moot. Applicants therefore respectfully request that the Examiner reconsider all presently outstanding rejections and that they be withdrawn. It is believed that a full and complete response has been made to the outstanding Office Action, and as such, the present application is in condition for allowance. If the Examiner believes that personal communication will expedite prosecution of this application, she is invited to contact the undersigned at her earliest convenience.

Dated: December 22, 2005  
2

Respectfully submitted,

By:   
Stanley M. Erjavac  
Reg. No. 38,442

HARNESS, DICKEY & PIERCE, P.L.C.  
P.O. Box 828  
Bloomfield Hills, Michigan 48303  
(248) 641-1600

SME/ld